upa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CRIMINAL JURISDICTION

CRIMINAL APPEAL NO.755 OF 2003

1) Rajkumar Bhawanidin Dube)

2) Shamsalone @ Dada Ramdhari Verma)
(Presently lodged at Yerawada)
Central Prison, Pune.)).. APPELLANTS

VERSUS

The State of Maharashtra).. RESPONDENT

Mr.Arfan A.E.A. Sait, Appointed Advocate, for the Appellants.

Mr.D.R. More, Additional Public Prosecutor, for the Respondent.

CORAM: V.G. PALSHIKAR, Acg. C.J. & SMT.NISHITA MHATRE, J.

DATED: 23RD AUGUST 2006

ORAL JUDGMENT : (PER MHATRE, J.)

. This Appeal has been preferred against the conviction of the Appellants under Section 302 read with Sections 34 and 397 read with Section 120-B of the Indian Penal Code. The Appellants have been sentenced to life imprisonment by the 8th Additional Sessions Judge, Pune.

2. The Appeal is now restricted to Appellant No.1 i.e. Accused No.3, since Appellant No.2, the other Appellant, died while in jail. Therefore, we confine our appreciation of facts and the scrutiny of the evidence led before the Sessions Court only to decide whether the judgment of the learned Sessions Judge with

respect to the Accused No.3 needs to be set aside.

3. It is the case of the prosecution that on 4th October 1998, Accused No.3 along with Accused No.2 entered Dura Technik Photo Lab (Konika Square) Pvt. Ltd. with the assistance of Accused No.1. They committed a robbery and killed one employee of the lab, Ramkrishna Balkrishna Uddhav, in the process. Accused No.1 was working there as a Security Guard. Although 4th October 1998 was a Sunday, which was a holiday for the lab, maintenance work was in progress. Some of the employees were working well past midnight. One Shaikh Shaffy Ismail, an employee of the lab, left at about 1.00 a.m., while Ramkrishna Uddhav, the deceased, remained in the lab informing him that he would leave a little later. The next morning i.e. on 5th October 1998, when one of the employees of the lab reached there at 7.00 a.m., he noticed that the shutter of the lab was partly open. He entered the lab and found Accused No.1 sleeping on the bench. He asked for a key of the mezzanine floor of the laboratory from Accused No.1, the Security Guard, and found the door was already opened. He followed Accused No.1 to the mezzanine floor and found the deceased lying in a pool of blood with cut injuries on his throat. This employee telephoned the managerial staff of the laboratory informing them of the incident. They in turn complained to the police who arrived at the spot.

4. The spot panchanama was drawn and pieces of the carpet bearing blood stains were seized as reflected from the seizure panchanama. The finger print experts were able to decipher two chance prints, one on the cash box and the other on the glass counter. The dog squad was requisitioned. After the spot panchanama and seizure panchanama were prepared, Accused No.1 was arrested on 6th October 1998. On Accused No.1 disclosing the names of Accused Nos.2 and 3, they were also arrested.

5. The evidence on which the prosecution seeks to rely on against Accused No.3 is that a knife was recovered at his instance. This knife bore blood stains of "B" group which was the blood group of the deceased. The second piece of evidence which the prosecution relies on is that the blood stained trousers of Accused No.3 were recovered after ten days in the dust bin outside a lodge where he had stayed. The main evidence on which the prosecution relies on for proving its case against Accused No.3 is the fact that Rs.51,000/- were recovered from his brother’s place in Uttar Pradesh.

6. Admittedly, there is no eye witness to the crime. The entire case of the prosecution is based on circumstantial evidence. Therefore, we will now consider whether each of the aforesaid circumstances could constitute a link in the chain which would lead to the inference that Accused No.3 had committed the crime.

7. PW5 is the panch witness who has been examined to prove the seizure panchanama relating to the knife. He has deposed that Accused No.3 had stated that he had thrown the knife used for the offence on Katraj Road ahead of the Snake Park. He accompanied the police and Accused No.3. Accused No.3 found the knife hidden under the bushes. The police seized the knife. This knife has been sent to the Chemical Analyser for analysis of the blood stains. The knife bore blood stains of "B" group. The blood of Accused No.3 which was analysed by the Chemical Analyser is also of "B" group. The blood group of both Accused No.3 as well as the deceased is of "B" group. Therefore, the circumstance of the knife bearing blood stains of "B" group is not very material. Besides this, the knife was recovered on 12th November 1998, more than a month after the incident. The recovery was made from an open area which was accessible to the members of the public. In our opinion, therefore, the recovery of the knife one month after the incident itself appears to be dubious. The investigators did not bother to obtain finger prints from the knife. No credence, therefore, can be placed on this recovery.

8. The next circumstance which the prosecution relies on is the recovery of the clothes worn by Accused No.3. PW15, the Police Sub Inspector attached to Vishrambaug Police Station, who investigated the crime,

has stated that on 3rd November 1998 he and two panchas accompanied Accused No.2 who pointed out a lodge where he had stayed in Dadar, Mumbai. This witness has stated that Accused No.2 then pointed out the room in which he had stayed. Nothing was recovered from this room. However, one of the room boys informed the witness that he had kept the clothes found in the room, for three days outside the room which had been occupied by Accused No.2. Thereafter, he had thrown the clothes in the dust bin which was behind the lodge. The witness has stated that on taking a search of the dust bin, two pairs of pants and one banian were recovered from it. Accused No.2 identified one of the trousers and banian as the clothes worn by him. He informed PW15 that the other khakhi coloured trousers belonged to Accused No.3. As these trousers were found to bear blood stains, they were sent to the Chemical Analyser. The report of the Chemical Analyser indicates that the blood stains were of "B" group. However, the recovery of these trousers was not made at the instance of Accused No.3. Besides this, the blood stains found were of the same group as that of the blood group of Accused No.3. Therefore, in our opinion, this circumstance also would not aid in proving the case of the prosecution.

9. The third circumstance on which the prosecution relies on is the recovery of Rs.51,000/- from the house of Accused No.3’s brother. PW16 is the Police Sub Inspector who accompanied Accused Nos.2 and 3 to their

respective Villages in Uttar Pradesh. He has deposed that he and his colleagues, the panchas and Accused Nos.2 and 3 arrived in Uttar Pradesh on 6th November 1998. With the help of local police, they recovered Rs.10,000/- at the instance of Accused No.2. On 7th November 1998, PW16 and the others in his group reached the village of the brother of Accused No.3. He found the parents and the brother of Accused No.3 in the house. The brother of Accused No.3 conceded that Accused No.3 had given him Rs.51,000/- to keep in safe custody and left the house. This money was given by Accused No.3 to the brother a month before the police arrived at his residence. PW16 has stated that the brother then handed over Rs.51,000/- in presence of the panchas. A seizure panchanama was recorded. One of the panchas has been examined as PW6 and this witness has corroborated the evidence of PW16 regarding the recovery of Rs.51,000/-. However, he has stated that the recovery was made from a sugarcane field, whereas PW16 has stated that the money was recovered from an earthenware pot in the house of the brother of Accused No.3. This is a material contradiction in the two depositions.

10. The brother of Accused No.3 has also been examined as PW14. This witness has been declared as hostile. He has denied that his brother Accused No.3 had ever handed over Rs.51,000/- to him for safe keeping. He has also denied that he had in turn given

the amount to the police when they arrived at his Village. In our view, therefore, the recovery of Rs.51,000/- has thus not been proved.

11. For accepting a case based totally on circumstantial evidence, the prosecution must prove the chain of events which would lead the Court to the acceptance of its case. The prosecution must establish that the circumstances are clear and cogent and that these circumstances are of such a nature as to exclude every other hypothesis save the one that Accused No.3 is guilty of the offences for which he is charged. The circumstances must be of such a nature as to be consistent with the sole hypothesis that the Accused No.3 is guilty of a crime imputed against him.

12. As we have found aforesaid, the recovery of knife bearing blood stains of "B" group from an open road, one month after the incident would not lead to the only conclusion that this knife had been used for committing the crime. The recovery of the clothes in a dust bin behind the lodge in which the accused allegedly stayed is also dubious. There is no evidence on record showing that dust bin was not normally cleared for over a month. It is unthinkable that the clothes worn by the accused would remain in a dust bin one month after the incident. The recovery of the money from the house of the brother of Accused No.3 also does not ring true as there is a variance in the depositions of PW16 and PW6.

PW16 has stated that the recovery was made from an earthen pot in the house of PW14, whereas PW6 has said that the recovery was made from a sugarcane field. All these factors, in our opinion, do not lead to the only unimpeachable hypothesis that it is the Accused No.3 who has committed the crime. Apart from this, Accused No.1, who was the Security Guard on the relevant day, has been acquitted. The State in its wisdom has not filed any Appeal against Accused No.1.

13. We, therefore, set aside the judgment dated 21st October 2000 passed by the 8th Additional Sessions Judge, Pune in S.C.No.27 of 1999 qua Accused No.3 and allow the Appeal qua Appellant No.1. Appellant No.1 be released forthwith, if not otherwise required in law.

(V.G.PALSHIKAR, Acg.C.J.)

(SMT. NISHITA MHATRE, J.)